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E & E CO., LTD.
8

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
11

12 E & E CO., LTD., a California
Corporation,

13 Plaintiff,

14 v.

15 CAP EXPORT, LLC, a California
16 Limited Liability Company; B.A.M.
INTERNATIONAL, INC., a California
17 Corporation; HOMEGOODS MANIA,
LLC, a California Limited Liability
18 Company; ABRAHAM AMOUYAL,
an Individual; and DOES 1 through 10,
19 inclusive,

20 Defendants.
21

Case No.

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT (17 U.S.C. §§
106, 113(a), 501)**

DEMAND FOR JURY TRIAL

22 Plaintiff E & E CO., LTD., for its Complaint against Defendants CAP
23 EXPORT, LLC; B.A.M. INTERNATIONAL, INC.; HOMEGOODS MANIA, LLC;
24 ABRAHAM AMOUYAL; and, DOES 1 through 10 (collectively, “Defendants”),
25 alleges as follows:

26 **PARTIES**

27 1. Plaintiff E & E CO., LTD. (“E & E”) is, and at all relevant times
28 was, a corporation duly organized and existing under the laws of the State of

1 California with its principal place of business in the City of Fremont in Alameda
2 County, California. E & E is engaged in the wholesale home furnishings business
3 under the registered fictitious business name “JLA Home.”

4 2. E & E is informed and believes, and on that basis alleges, that
5 Defendant CAP EXPORT, LLC (“Cap Export”) is a limited liability company
6 organized and existing under the laws of the State of California with its principal
7 place of business in the City of Vernon in Los Angeles County, California. E & E is
8 further informed and believes, and on that basis alleges, that Cap Export is engaged
9 in the wholesale home goods business.

10 3. E & E is informed and believes, and on that basis alleges, that
11 Defendant HOMEGOODS MANIA, LLC (“Homegoods”) is a limited liability
12 company organized and existing under the laws of the State of California with its
13 principal place of business in the City of Vernon in Los Angeles County, California.
14 E & E is further informed and believes, and on that basis alleges, that Homegoods is
15 engaged in the wholesale home goods business.

16 4. E & E is informed and believes, and on that basis alleges, that
17 Defendant B.A.M. INTERNATIONAL, INC. (“B.A.M.”) is a corporation organized
18 and existing under the laws of the State of California with its principal place of
19 business in the City of Vernon in Los Angeles County, California. E & E is further
20 informed and believes, and on that basis alleges, that B.A.M. is engaged in the
21 wholesale home goods business.

22 5. E & E is informed and believes, and on that basis alleges, that
23 Defendant ABRAHAM AMOUYAL (“Amouyal”) is an individual whose primary
24 residence is located in Los Angeles County, California. E & E is further informed
25 and believes, and on that basis alleges, that Amouyal is essentially the owner,
26 director, and manager of the other Defendants. Specifically, Amouyal is, among
27 other things, the Manager of Cap Export, the Manager of Homegoods, the Chief
28 Executive Officer, Secretary, Chief Financial Officer, and sole Director of B.A.M.

1 E & E is further informed and believes, and on that basis alleges, that Cap Export,
2 Homegoods, and B.A.M. all share the same address – 5233 Alcoa Ave., Vernon,
3 California.

4 6. The true names and capacities, whether individual, corporate,
5 associate, or otherwise, of those Defendants sued herein as DOES 1 through 10
6 (“DOE Defendants”) are unknown to E & E at the present time and said DOE
7 Defendants are therefore sued by such fictitious names. When the true names and
8 capacities of said DOE Defendants have been ascertained, E & E will seek to amend
9 this Complaint to include such true names and capacities. E & E alleges on
10 information and belief that each of the DOE Defendants performed, participated in,
11 aided and abetted in some manner, conspired, or otherwise is responsible for the acts
12 and omissions alleged in this Complaint and that each such DOE Defendant is liable
13 to E & E for the relief sought in this Complaint.

14 7. E & E is informed and believes, and on that basis alleges, that at all
15 times relevant herein, each named Defendant and each DOE Defendant was the alter
16 ego, agent, servant, employee, principal, officer, director, partner, representative,
17 parent, subsidiary, successor-in-interest, aider-and-abettor, or co-conspirator of each
18 of the other Defendants, and was acting with the knowledge, approval, and/or
19 ratification of each of the other Defendants.

20 **JURISDICTION AND VENUE**

21 8. This copyright infringement action arises under the Copyright Act of
22 1976, 17 U.S.C. section 101 *et seq.* This Court has subject matter jurisdiction over
23 this action under 28 U.S.C. section 1331 (federal question) and 28 U.S.C. section
24 1338 (exclusive original copyright jurisdiction).

25 9. This Court has both general and specific personal jurisdiction over
26 each of Defendants Cap Export, B.A.M., Homegoods, and Amouyal pursuant to rule
27 4(k)(1)(A) of the Federal Rules of Civil Procedure and section 410.10 of the
28 California Code of Civil Procedure (the forum state’s long-arm statute). On

information and belief, each of Defendants Cap Export and Homegoods is a limited liability company organized and existing under the laws of the State of California with its principal place of business in the City of Vernon in Los Angeles County, California. On information and belief, Defendant B.A.M. is a corporation organized and existing under the laws of the State of California with its principal place of business in the City of Vernon in Los Angeles County, California. On information and belief, Defendant Amouyal is a resident of Los Angeles County, California. E & E also is informed and believes, and on that basis alleges, that the infringing activity at issue in this Complaint originated in Los Angeles County, California and additionally that the named Defendants willfully directed their infringing activity at the copyright owner, E & E, in the State of California.

10. Venue is proper in this federal judicial district pursuant to 28 U.S.C. sections 1391(b), 1391(d), and 1400(a) because on information and belief, the headquarters and principal place of business of each of Defendants Cap Export, B.A.M., and Homegoods are located in this district; Defendant Amouyal's residence is in this district; a substantial part of the events and omissions giving rise to this claim occurred in this district; and, this Court has personal jurisdiction over each of the named Defendants at the time of the filing of this action.

GENERAL ALLEGATIONS

11. E & E exclusively owns an original textile chevron design designated as "08WR0001" (the "Libra Chevron Design").

12. E & E applied for and obtained a United States copyright registration, Registration No. VA 1-909-073, for its Libra Chevron Design, which effectively provided E & E with copyright protection commencing on February 12, 2014. E & E has not assigned, granted, conveyed, mortgaged, or otherwise transferred property rights in its Libra Chevron Design to any other party.

13. E & E makes and sells textile products bearing its Libra Chevron Design for profit.

1 14. E & E first offered products bearing the Libra Chevron Design in or
2 about February 2014.

3 15. E & E and Defendants Cap Export, B.A.M., and Homegoods are
4 competitors in the business of wholesale selling of home furnishings, and E & E is
5 informed and believes and thereon alleges that Defendant Amouyal is the owner of
6 those Defendants and/or controlled or controls those Defendants.

7 16. Prior to Defendants' infringing conduct described herein, E & E's
8 products bearing the Libra Chevron Design were publicly advertised, marketed, and
9 widely available for retail purchase.

10 17. E & E is informed and believes, and on that basis alleges, that prior to
11 Defendants' infringing conduct described herein, Defendants had access to the Libra
12 Chevron Design.

13 18. E & E is informed and believes, and on that basis alleges, that
14 Defendants accessed a copy of the Libra Chevron Design from E & E or an
15 intermediary.

16 19. E & E discovered that Defendants were advertising, marketing,
17 distributing, and selling competing home furnishing products bearing a graphic design
18 apparently copied from and infringing on E & E's copyright on its Libra Chevron
19 Design. Specifically, E & E's investigation revealed Defendants to be advertising,
20 marketing, distributing, and selling bedding products bearing a textile print that is
21 substantially identical to the Libra Chevron Design (hereafter, the "Accused
22 Products").

23 20. The Accused Products include, but are not limited to, bedspread quilts
24 and pillow shams marketed under, at least, the "Casa Andrea Milano" trademark
25 (purportedly owned by Defendant Cap Export), including products bearing the name
26 "Zig Zag Reversible Chevron."

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1 21. The Accused Products also include, but are not limited to, bedspread
2 quilts and pillow shams marketed under, at least, the “Divano Roma Furniture”
3 trademark (purportedly owned by Defendant Homegoods), including products also
4 bearing the name “Zig Zag Reversible Chevron.”

5 22. Illustrative comparisons of E & E’s products utilizing its Libra
6 Chevron Design against exemplars of several of the Accused Products in different
7 colors and at different degrees of magnification that were created by laying
8 Defendants’ infringing product (on the left) partly over E & E’s product (on the right)
9 are set forth below:

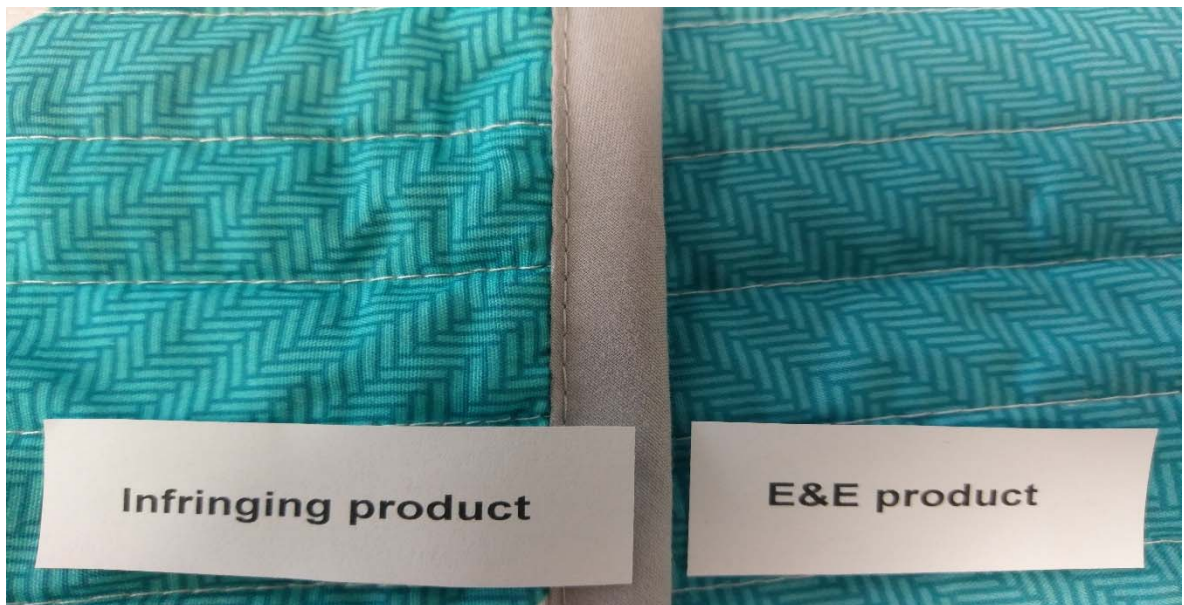
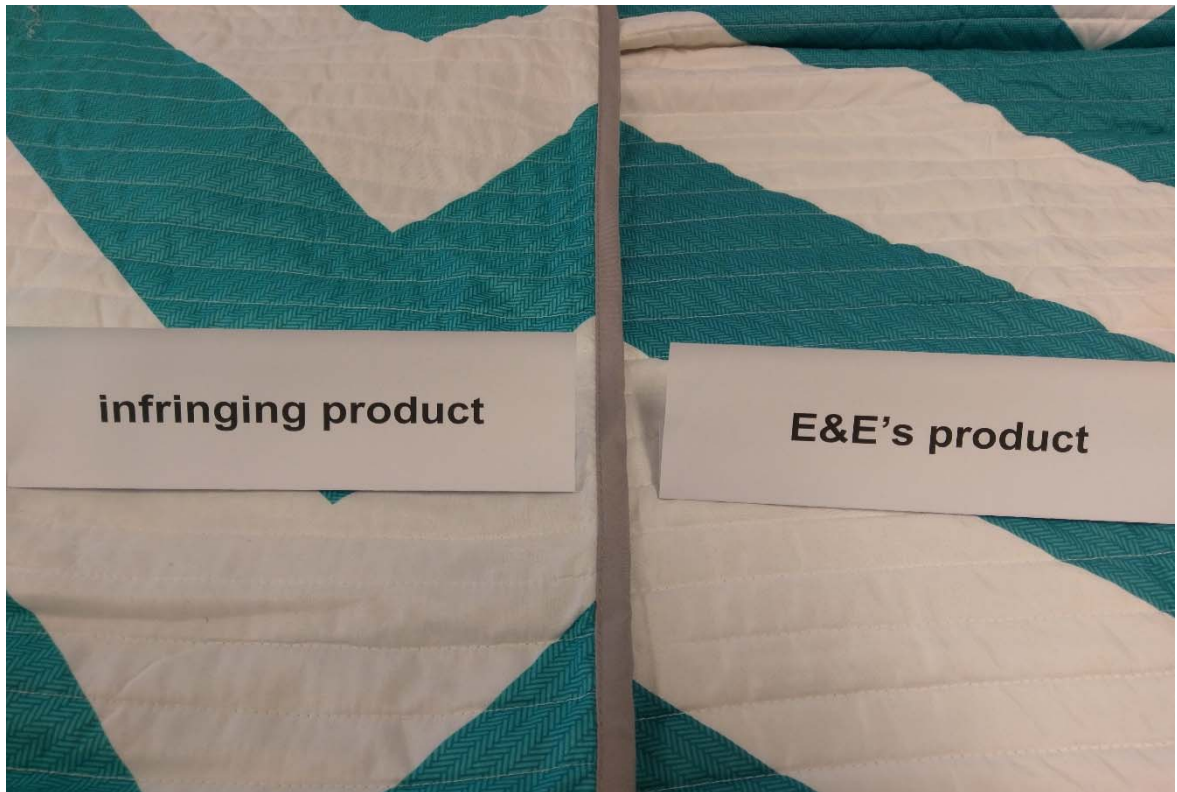


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23. E & E is informed and believes, and on that basis alleges, that the Accused Products were manufactured for Defendant B.A.M. and sold through

1 Defendants Cap Export and Homegoods, all at the direction of Defendant Amouyal.
2 E & E is informed and believes, and on that basis alleges, that Defendant Amouyal is
3 the owner of Defendants B.A.M., Cap Export, and Homegoods, and/or orchestrated
4 the conduct described herein.

5 24. The substantial similarity between E & E's Libra Chevron Design and
6 the graphic design borne by the Accused Products is too striking to be the result of
7 anything other than copying and when the details of the Accused Products are
8 compared to E & E's product (such as the design dimension, border piping, stitching
9 types, locations, and color) it becomes even more obvious that the Accused Products
10 are copies of E & E's product.

11 25. E & E sent cease-and-desist letters to Defendant Amouyal on behalf of
12 Defendants Cap Export, B.A.M., and Homegoods including in April 2017, regarding,
13 *inter alia*, Defendants' infringement of E & E's Libra Chevron Design in the Accused
14 Products.

15 26. To date, E & E has not received a response to its cease-and-desist
16 letters. Moreover, to date, and despite E & E's demand, Defendants have not agreed
17 to stop, and instead appear to have continued, their infringing conduct. Thus, E & E
18 brings this action to stop, and obtain redress for, Defendants' willful copyright
19 infringement of E & E's graphic design on their competing products.

20 27. E & E is informed and believes, and on that basis alleges, that
21 Defendants have willfully advertised, marketed, distributed, and sold the Accused
22 Products, willfully continued to advertise, market, distribute, and sell the Accused
23 Products after receiving the cease-and-desist letters from E & E, and likewise
24 currently continue to advertise, market, distribute, and sell the Accused Products.

25 28. E & E is informed and believes, and on that basis alleges, that
26 Defendants copied, manufactured (or caused to be manufactured), distributed, publicly
27 displayed, and sold and likewise currently continue to copy, manufacture (or cause to
28

1 be manufactured), distribute, publicly display, and sell products bearing the Libra
 2 Chevron Design with knowledge that the Libra Chevron Design belongs to E & E.

3 29. E & E is informed and believes, and on that basis alleges, that
 4 Defendants copied, manufactured (or caused to be manufactured), distributed, publicly
 5 displayed, and sold and likewise currently continue to copy, manufacture (or cause to
 6 be manufactured), distribute, publicly display, and sell products bearing the Libra
 7 Chevron Design without the copyright owner E & E's authorization and with scienter
 8 that they had, and have, no right to do so.

9 **FIRST CLAIM FOR RELIEF**

10 **(For Copyright Infringement -- 17 U.S.C. §§ 106, 113(a), 501)**

11 30. E & E incorporates herein the allegations contained in the preceding
 12 paragraphs of this Complaint.

13 31. As set forth above, E & E obtained United States copyright registration
 14 of the Libra Chevron Design (Registration No. VA 1-909-073) either before or less
 15 than five years after the design was made public.

16 32. E & E has not assigned, granted, conveyed, mortgaged, or otherwise
 17 transferred property rights in the Libra Chevron Design to any other party.

18 33. E & E is the legal and beneficial owner of the Libra Chevron Design.

19 34. E & E is informed and believes, and on that basis alleges, that
 20 Defendants had access to E & E's Libra Chevron Design.

21 35. E & E is informed and believes, and on that basis alleges, that
 22 Defendants manufacture, or cause to be manufactured, textile products bearing
 23 graphic designs, and advertise, market, distribute, and sell such products for profit.

24 36. E & E is informed and believes, and on that basis alleges, that
 25 Defendants infringed E & E's copyright by creating, making (or causing to be made),
 26 developing, advertising, marketing, distributing, and/or selling the Accused Products
 27 bearing a graphic design substantially, or otherwise strikingly, similar to, and copied
 28 from, the Libra Chevron Design.

1 37. E & E is informed and believes, and on that basis alleges, that the
2 effective date of E & E's copyright registration of the Libra Chevron Design predates
3 the commencement of Defendants' infringing conduct.

4 38. Due to Defendants' acts of infringement, E & E has suffered damages
5 to its business in an amount to be established at trial.

6 39. Due to Defendants' acts of infringement, E & E has suffered general
7 and special damages in amounts to be established at trial.

8 40. Due to Defendants' acts of infringement, Defendants have obtained
9 direct and indirect profits they would not otherwise have realized but for their
10 infringement of the Libra Chevron Design, entitling E & E to disgorgement of
11 Defendants' profits directly and indirectly attributable to Defendants' infringement of
12 the Libra Chevron Design in an amount to be established at trial.

13 41. In the alternative, E & E is entitled to statutory damages from
14 Defendants for Defendants' infringement of the Libra Chevron Design.

15 42. E & E is informed and believes, and on that basis alleges, that
16 Defendants' infringement of the Libra Chevron Design was willful, reckless, and/or in
17 blatant disregard of E & E's rights as the copyright holder.

18 43. E & E has incurred and will continue to incur attorneys' fees, costs,
19 and expenses to prosecute this copyright infringement action. The circumstances of
20 this dispute warrant recovery of attorneys' fees and costs under 17 U.S.C. section 505.

21 **PRAYER FOR RELIEF**

22 Wherefore, E & E prays for judgment as follows:

23 1. That Defendants, and their agents and employees, be enjoined from
24 infringing E & E's copyright, specifically including the copyright for the Libra
25 Chevron Design;

26 2. That E & E be awarded all direct and indirect profits of Defendants
27 plus all direct and indirect losses of E & E, plus any other monetary advantage gained
28 by Defendants through their infringement, the exact sum to be proved at trial; or, to

1 the extent elected before final judgment, statutory damages available under the
2 Copyright Act;

3 3. That a trust be imposed over all Accused Products and any revenues
4 derived from the sale or distribution of any Accused Products or unauthorized
5 exploitation of the Libra Chevron Design;

6 4. That Defendants account to E & E for their profits from infringement
7 of the Libra Chevron Design;

8 5. That E & E be awarded additional, enhanced damages for the reckless
9 and willful nature of Defendants' infringement of the Libra Chevron Design;

10 6. That E & E be awarded its attorneys' fees under 17 U.S.C. section
11 505;

12 7. That E & E be awarded pre-judgment interest as allowed by law;

13 8. That E & E be awarded the costs of this action; and,

14 9. That E & E be awarded such further legal and equitable relief as the
15 Court deems just and proper.

16 DATED: June 30, 2017

Michael W. Ellison
Heather P. Condon
SMITH ♦ ELLISON

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18
19 By /S/ MICHAEL W. ELLISON
Michael W. Ellison
20 Attorneys for Plaintiff E & E CO.,
21 LTD.

22 **Plaintiff E & E CO., LTD. hereby demands a trial by jury.**

23 DATED: June 30, 2017

Michael W. Ellison
Heather P. Condon
SMITH ♦ ELLISON

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25
26 By /S/ MICHAEL W. ELLISON
Michael W. Ellison
27 Attorneys for Plaintiff E & E CO.,
28 LTD.